

AMENDED IN SENATE APRIL 11, 2005

AMENDED IN SENATE MARCH 31, 2005

SENATE BILL

No. 938

Introduced by Senator Dunn

February 22, 2005

An act to add Section 1736.5 to the Insurance Code, relating to insurance agents and brokers.

LEGISLATIVE COUNSEL'S DIGEST

SB 938, as amended, Dunn. Insurance agents and brokers: duties to clients.

Existing law generally regulates insurance agents and brokers.

This bill would require that an agent or broker acting on behalf of a client in a transaction involving commercial insurance, as defined, use reasonable care, skill, and diligence in performing services on behalf of the client, and would provide that the agent or broker owes the client the duties of good faith, honesty, loyalty, and integrity. The bill would impose specified requirements on an agent or broker acting on behalf of a client with respect to making inquiries of insurers, obtaining coverage, disclosing information to the client, and charging fees to the client.

Existing law prohibits a life agent, travel agent, or fire and casualty agent from acting as an agent of an insurer unless the insurer has filed with the Insurance Commissioner a notice of appointment, as specified.

This bill would set forth the circumstances requiring an agent or broker to be appointed by an insurer in connection with the transaction of commercial insurance.

The bill would allow the commissioner to adopt regulations to implement these provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1736.5 is added to the Insurance Code,
2 to read:

3 1736.5. (a) A licensee acting on behalf of a client shall use
4 reasonable care, skill, and diligence in performing services on
5 behalf of the client, and owes the client the duties of good faith,
6 honesty, loyalty, and integrity. A licensee acting on behalf of a
7 client may not put the licensee's financial interest ahead of that
8 of his or her client.

9 (b) A licensee acting on behalf of a client who charges a client
10 a fee for his or her services related to the procurement of
11 insurance shall make reasonable inquiries to ascertain the needs
12 and desires of the client with regard to the class of insurance for
13 which the client has sought the licensee's services. The inquiries
14 shall attempt to elicit the client's preferences concerning price,
15 quantity and quality of coverage, the quality of the insurer with
16 respect to customer service, and the quality of the insurer with
17 respect to financial strength. A licensee shall reasonably advise
18 the client on the ~~insurance alternatives available to~~ *types of*
19 *insurance products available that* meet the client's express needs
20 and desires.

21 (c) (1) A licensee acting on behalf of a client shall act
22 reasonably to obtain coverage that fulfills the client's express
23 needs and desires with respect to the attributes of *price, quantity,*
24 *and quality of coverage,* ~~price, insurer solvency, and insurer~~
25 ~~service. A licensee retained to acquire coverage~~ *the quality of the*
26 *insurer with respect to customer service, and the quality of the*
27 *insurer with respect to financial strength. Such a licensee who*
28 makes a specific representation to a client or to the public
29 generally that he or she can or will obtain a specific attribute or
30 other result in the procurement of a policy shall diligently
31 attempt to fulfill that representation. A licensee shall seek quotes
32 from insurers that the licensee knows might meet the client's
33 needs or desires, or the licensee's representations, better than
34 other insurers.

(2) Notwithstanding paragraph (1), a licensee has no duty to do either of the following:

(A) Seek a quote from an insurer if that insurer has indicated within the prior 12 months that it is not interested in providing quotes to the licensee or the licensee's firm.

(B) Seek quotes from more than six insurers for each type of policy being sought for the client. This exception shall not apply if quotes are obtained by computer rating software rather than manually from insurer underwriters, or if the licensee and client have agreed that the licensee will obtain quotes from more than six insurers.

(d) A licensee acting on behalf of a client shall disclose to a client all quotes he or she obtains on the client's behalf that the licensee ~~believes~~ *knows* might meet the client's express needs or desires or the licensee's representations. For each quote, the licensee shall make a reasonable disclosure to the client as to each of the following:

(1) The name of the insurer.

(2) The premium amount.

~~(3) The information required by subdivision (b)~~ *(b) How each quote addresses the client's preferences concerning price, quantity and quality of coverage, the quality of the insurer with respect to customer service, and the quality of the insurer with respect to financial strength.*

(4) All material facts which, consistent with the standard of care in the industry and existing statutory and case law, should reasonably be known to the licensee and disclosed to the client regarding the insurer and policy terms.

(e) The amount a licensee charges a client for a service or group of services shall be commensurate with the amount the licensee charges other clients for an equivalent service or group of services, and shall be proportional to charges imposed when more or less service is provided.

(f) (1) A licensee shall not charge a client a fee for services related to the licensee's placement of insurance with an insurer if the licensee has been appointed by that insurer pursuant to subdivision (a) of Section 1704, or if the licensee is required to be appointed by the insurer pursuant to that subdivision or paragraph (2) of this subdivision.

(2) A licensee shall be appointed by an insurer if he or she acts on behalf of that insurer in any manner other than collecting, maintaining, or transmitting premium or return premium, or delivering evidence of coverage in a ministerial capacity. In addition, a licensee shall be appointed if:

(A) The insurer has delegated to the licensee authority to decide whether or not contractually to obligate the insurer. Allowing a licensee to provide an insured with a binder, certificate of insurance, insurance identification card, or any other document indicating that insurance is or will be in effect as of a certain date and time, without the insurer's prior oral, written, or electronic confirmation of coverage for that insured, constitutes authorization to decide to contractually obligate.

(B) The insurer controls, by either incentive or disincentive, or reserves the right to control, how the licensee conducts his or her insurance business. However, the following types of terms in a written agreement between an insurer and a licensee shall not constitute evidence that the insurer controls how the licensee conducts business:

(i) Terms in which the licensee agrees to refrain from specific types of conduct that could create ostensible agency.

(ii) Terms in which the licensee agrees to maintain the requisite license and bond.

(C) The licensee has placed the interests of the insurer above the interests of the clients the licensee has placed with that insurer, with the consent of or ratification by the insurer.

(D) The licensee would be deemed an agent of the insurer under the statutory or case law relating to agency in this state.

(g) The commissioner shall have broad discretion to adopt reasonable regulations to implement, interpret, or clarify this section. The regulations may be adopted as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of the Government Code, and for the purpose of that chapter, including Section 11349.6 of the Government Code, the adoption of the regulations shall be considered by the Office of Administrative Law to be necessary for the immediate preservation of the public peace, health and safety, and general welfare.

(h) This section applies only to transactions involving commercial insurance, ~~as defined in subdivision (b) of Section~~

1 ~~675.5~~ *defined as an insurance product designed for and bought*
2 *by a business, organization, institution, governmental agency, or*
3 *any other person or entity in a nonpersonal capacity.* The
4 application of this section only to commercial insurance shall not
5 be interpreted as an abrogation of other legal authority that
6 imposes the same or similar requirements to transactions
7 involving personal lines.

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